

MEMORANDUM OF LEGAL INTERPRETATION

To: The Members and Personnel of the
Department of Financial Institutions

From: The Policy and Interpretation Committee

Re: The Charging of Dormant
Service Fees

Date: April 26, 1989
Revised: August 8, 1996

A question has been presented to the Policy and Interpretation Committee regarding whether a bank may charge both the dormant fee to a customer's account and the regular service and maintenance fee at the same time when such account is deemed dormant.

ANALYSIS: IC 28-1-20-1.1 provides for the charging of two types of fees on demand and time accounts. IC 28-1-20-1.1(d) provides that any bank, savings bank, or trust company may impose a monthly service charge and maintenance charge on active accounts, whether time or demand, that are carried by it on its books, in such amounts as may be agreed upon between it and its depositors. This establishes a contractual relationship between the customer and the bank to cover those expenses of maintaining the customer's account, and this account is considered an active account whether there are any transactions made to this account or not. Even if there are no transactions posted to this active account the bank may still impose the service and maintenance fees as provided for in their contractual agreement.

However, if there are no transactions to either the customer's demand account or time account for a period of time of one year and three years respectively, the accounts become what is known as dormant. IC 28-1-20-1.1 (b) states any bank, savings bank, or trust company may impose and collect a monthly service and maintenance charge on dormant accounts, whether time or demand, in such reasonable amounts as may be determined by a resolution of the board of directors within the limits fixed by the Department by rule. The Department, by the enactment of a regulation known as 750 IAC 2-4-2 has set the limit at .75 cents per month or \$9.00 per year.

In determining whether a bank may impose their regular monthly service and maintenance charges plus an additional dormant charge when an account becomes dormant as defined by law, an analysis of the language of the statute must be considered. IC 28-1-20-1.1(c) states in part as follows:

"The Department shall fix the maximum service or maintenance charge which may be imposed upon dormant accounts with reference to the additional expense of operation caused by the maintenance of said accounts and the effect of dormant accounts upon the expenses of operation of banks, savings banks, and trust companies...."

In the authorization of monthly charges on dormant accounts it is apparent that the Legislature has acknowledged that the maintenance of such accounts will result in an additional expense to the bank which the bank should be able to recover through an additional charge for the maintenance of these dormant accounts.

CONCLUSION: A bank may impose monthly service and maintenance charges on all active time and demand accounts in an amount agreed upon between the bank and its customer. When and if a time or demand account becomes dormant, a bank may impose an additional dormant charge to cover the additional expense of operation caused by the maintenance of said accounts. However, such additional charges may not exceed the limits as established by the Department.